



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-54607-2024
Date of Decision:13.11.2024

Hira Lal ...Petitioner

vs.

State of Punjab ...Respondent

Coram : Hon’ble Mr. Justice N.S.Shekhawat

Present : Mr. Sandeep Arora, Advocate
for the petitioner.

Mr. I.P.S Sabharwal, DAG, Punjab.

N.S.Shekhawat J. (Oral)

1. The petitioner has filed the present petition under Section 482 of B.N.S.S with a prayer to grant anticipatory bail to him in case FIR No.116, dated 23.08.2024, under Sections 21(b) and 29 of the NDPS Act, registered at Police Station Shahkot ,District Jalandhar Rural (Annexure P-1).
2. The FIR in the present case was registered on the basis of the statement made by ASI Balbir Chand and the same has been reproduced below:-

“To the SHO, P.S Shahkot, Jai Hind, Today I ASI alongwith ASI Sarabjit Singh No.562/Jal., Sr. Ct. Navdeep Singh No.854/Jal. Sr. Ct., Harjeet Singh No. 1843, Jal, CT Sarabjit Singh No.769/Jal and LCT Lovepreet Kaur 331/Jal. on govt. vehicle Kia No.PB65-BH-0772 in connection with patrolling and for checking of suspicious men were present in the area of Village Banga Chowk then from the side of Village Fazalwal a motorcycle without number was coming and two clean shaven person were riding on

it. To whom I ASI with the help of associates signaled them to stop, then they got perplexed and tried to turn the motorcycle back. Then I ASI with the help of my associates nabbed them and I ASI asked their names. The motorcycle driver told his name as Chand Singh @ Golu S/o Rashpal Singh R/o Sherpur Tiaba, PS Dharamkot, Distt. Moga and other young man sitting on the backside of the motorcycle told his name as Gurpreet @ Gopi S/o Sarvan Singh R/o Punia PS Shahkot, District Jalandhar. To whom I ASI introduced myself and told that my name is Balbir Chand No.736/Ldh. and I am posted at PS Shahkot. I suspect that you and motorcycle in your possession contain some objectionable items due to which you and your motorcycle are required to be searched. But you have full legal right that you can get your search done from gazetted officer or magistrate who can be called at the spot. On which notice under Section 50 of NDPS Act was prepared of Chand Singh @ Golu S/o Rashpal Singh R/o Sherpur Tiaba, PS Dharamkot, District Moga and Gurpreet Singh @ Gopi S/o Sarvan Singh R/o Punia, PS Shahkot, Distt. Jalandhar and Chand Singh @ Golu aforesaid signed in Punjabi and Gurpreet Singh @ Gopi signed in Punjabi thereon. On which the witnesses put their signatures I ASI have made every effort to joint public witness before searching the aforesaid accused Chand Singh Golu and Gurpreet Singh @ Gopi and motorcycle under their possession but everyone expressed their own circumstances and nobody became ready to participate in said search. On which I ASI in the presence of my associates conducted search of Chand Singh @ Golu and Gurpreet Singh @ Gopi and the motorcycle in their possession as per the procedure. During the search and seizure a transparent plastic envelope was found from the right side pocket of his lower which was got opened and checked, then heroine was found therein. Heroine found was weighed on weighing scale alongwith envelope total 25 gram heroine was there which was put into cloth bag alongwith transparent envelope and parcel was prepared and

parcel was stamped with seal BC and then I ASI searched the pant which worn by Gurpreet Singh @ Gopi and during search a transparent plastic envelope was found in his right pocket which was got opened and on checking heroine was found therein. Heroine found was weighed on electronic scale alongwith envelope and total 05 heroine was therein. Which was put into cloth bag alongwith transparent plastic envelope and parcel was prepared and parcel was stamped with seal BC. Sample of seal was prepared separately. After usage of seal it was handed over to ASI Sarabjit Singh No.562/Jal. Found one parcel in which 25 gram heroine was there stamped with seal BC of Chand Singh @ Golu and one parcel wherein 5 gram heroine was there stamped with seal BC of Gurpreet Singh @ Gopi alongwith motorcycle Platine without number color black was taken into police possession as a evidence. During said process videography was done in compliance with Section 105 of BNSS. Accused Chand Singh @ Golu by keeping in his possession 25 grams heroine and Gurpreet Singh @ Gopi by keeping in his possession 5 gram heroine have committed offence under Section 21(B)-61-85 of NDPS Act. Against them ruqa was written and sent it to the police station through CT Sarabjit Singh No.769/Jal. By hand for registration of FIR. After registration of case number be informed. After issuance of Special reports be sent to senior officials and Hon'ble Ilaqua Magistrate. Control room be informed. IASI alongwith associates is present on the spot for investigation. Today at the area of Village Bagga Chowk at 11:10 PM LAT-31.0387216 Long-75.3571891 Sd/ Balvir Chand ASI PS Shahkot, Distt. Jalandhar Rural dated 23.08.2024. Today at Police Station: On receipt for said writing at police station FIR was registered under aforesaid sections and original writing alongwith copy of FIR through special messenger CT is beign sent to the ASI at the spot. After preparing special reports are being sent to Hon'ble Ilaqua Magistrate and senior officers through Sr. Ct. Amandeep Singh No. 1234

by hand. Control room is being informed”.

3. Learned counsel for the petitioner contends that the petitioner has not been named in the FIR nor there is any evidence to connect him with the commission of crime. He further contends that the petitioner has been nominated as an accused subsequently on the basis of the disclosure statement suffered by Chand Singh, co-accused and except the disclosure statement suffered by the co-accused in police custody, there is no other legally admissible evidence against him. He further contends that even the mandatory provisions of Section 50 of the NDPS Act have not been complied in the present case and the petition is liable to be allowed by this Court.

4. On advance notice, Mr. I.P.S Sabharwal, DAG, Punjab has appeared on behalf of official respondent and submits that the petitioner is a habitual offender and is a smuggler of drugs. He further contends that the petitioner is facing one more case under NDPS Act. Apart from that, he has already been convicted in another case of the NDPS Act. Still further, he is also facing three more criminal cases under the various provisions of IPC. Learned State counsel has placed reliance on the judgment passed by the Hon'ble Supreme Court in the matter of **“State of Haryana Vs. Samarth Kumar”, 2022 LiveLaw (SC) 622**, wherein the Hon'ble Supreme Court held as follows:-

*“4. The High Court decided to grant pre-arrest bail to the respondents on the only ground that no recovery was effected from the respondents and that they had been implicated only on the basis of the disclosure statement of the main accused Dinesh Kumar. Therefore, reliance was placed by the High Court in the majority judgment of this Court in **Tofan Singh v. State of Tamil Nadu** reported in (2021) 4 SCC 1.*

5. *But, it is contended by the learned Additional Advocate General appearing on behalf of the State of Haryana that on the basis of the anticipatory bail granted to the respondents, the Special Court was constrained to grant regular bail even to the main accused-Dinesh Kumar and he jumped bail. Fortunately, the main accused-Dinesh Kumar has again been apprehended. According to the learned Additional Advocate General, the respondent in the second of these appeals is also a habitual offender.*

6. *Learned counsel appearing on behalf of the respondent in the first of these Appeals contends that the State is guilty of suppression of the vital fact that the respondent was granted regular bail after the charge-sheet was filed and that therefore, nothing survives in the appeal. But, we do not agree.*

7. *The order of the Special Court granting regular bail to the respondents shows that the said order was passed in pursuance of the anticipatory bail granted by the High Court. Therefore, the same cannot be a ground to hold that the present appeals have become infructuous.*

8. *In cases of this nature, the respondents may be able to take advantage of the decision in **Tofan Singh v. State of Tamil Nadu (supra)**, perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.”*

5. I have heard the rival submissions made by learned counsel for the parties and perused the record.

6. From the submissions made by learned State counsel, it is apparent that the petitioner in the past also, was involved in various criminal activities including the smuggling of drugs. Even, during the course of investigation, Chand Singh, co-accused had suffered a disclosure statement and he clearly stated that the petitioner had supplied the drugs to him and he is actively

involved in the commission of crime. Consequently, keeping in view the gravity of the offence as well as need for custodial interrogation of the petitioner, the present petition deserves to be dismissed by this Court.

7. I find sufficient force in the submissions made by learned State counsel that the custodial interrogation of the petitioner would be imperative to get the details with regard to the source of contraband, modus operandi and to make further recoveries of contraband from him.

8. Thus, in view of the above discussion, the present petition is ordered to be dismissed, accordingly.

13.11.2024
hitesh

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No